

July 14, 2022

Hon. Ona T. Wang
United States Magistrate Judge
United States Courthouse
Southern District of New York
500 Pearl St., Courtroom 20D
New York, NY 10007-1312

MEMO ENDORSED.

Re: *State of New York, et al. v. U.S. Department of Homeland Security, et al.*, 19 Civ. 7777 (GBD) (OTW) (“*State of New York*”); *Make the Road New York, et al. v. Tracy Renaud, et al.*, No. 19-cv-7993 (GBD)(OTW) (“*MRNY*”)

Dear Judge Wang,

Pursuant to the Court’s March 18, 2022 Order, *State of New York* ECF No. 314, *MRNY* ECF No. 335, the parties, by and through their respective counsel, hereby submit this joint status letter.

On March 10, 2021, defendants notified the Court that the public charge rule¹ (the “Rule”) would no longer be enforced or applied. *State of New York* ECF No. 283, *MRNY* ECF No. 305. On March 11, the Court granted defendants’ request for a stay. *State of New York* ECF No. 286, *MRNY* ECF No. 308. The Court granted the parties’ joint requests to extend the stay, and these consolidated actions are currently stayed until July 20, 2022. *See State of New York* ECF No. 314, *MRNY* ECF No. 335.

The parties request that the Court further extend the stay for 120 days, *i.e.*, until November 17, 2022, and direct the parties to file a joint status letter by November 11, 2022 to update the Court, and, if warranted, request a further extension of the stay. Extending the stay until November 17 is warranted given the issuance of a notice of proposed rulemaking by Defendant Department of Homeland Security (“DHS”) regarding public charge, and the ongoing proceedings discussed below.

DHS Rulemaking

On August 23, 2021, DHS published an advanced notice of proposed rulemaking “to seek broad public feedback on the public charge ground of inadmissibility that [would] inform its development of a future regulatory proposal” (the “ANPRM”).² On October 22, 2021, Plaintiffs in *State of New York*, along with 17 other states and the District of Columbia, submitted a

¹ Inadmissibility on Public Charge Grounds, 84 Fed. Reg. 41,292 (Aug. 14, 2019).

² Public Charge Ground of Inadmissibility, 86 Fed. Reg. 47,025 (Aug. 23, 2021).

comment in response to the ANPRM.³ Plaintiffs and certain of their counsel in *MRNY* also submitted comments.⁴

On February 24, 2022, DHS published a notice of proposed rulemaking “to prescribe how it determines whether a noncitizen is inadmissible to the United States under section 212(a)(4) of the Immigration and Nationality Act (INA) because they are likely at any time to become a public charge,” and requested comments on or before April 25, 2022 (the “NPRM”).⁵ On June 3, 2022, in conjunction with updating its public charge resources webpage, USCIS issued a statement noting that: “After completing an analysis of the public input received on the NPRM, DHS plans to publish a new final rule in July or August 2022 that will put in place new regulations implementing the public charge ground of inadmissibility.”⁶

Ninth Circuit

On June 18, 2021, several States, led by Arizona, filed a petition for a writ of certiorari in the Supreme Court with respect to the Ninth Circuit’s denial of their motion for leave to intervene to defend the Rule and argue in favor of its validity. *See City and County of San Francisco v. U.S. Citizenship and Immigration Services*, 992 F.3d 742 (9th Cir. 2021). On October 29, 2021, the Supreme Court granted certiorari limited to Question 1 presented by the petition—*i.e.*, “[w]hether States with interests should be permitted to intervene to defend a rule when the United States ceases to defend.” *See Arizona v. City and County of San Francisco*, 142 S. Ct. 417 (2022). The Supreme Court heard oral argument on the matter on February 23, 2022. On June 15, 2022, the Supreme Court dismissed the writ of certiorari as improvidently granted. *Arizona v. City and County of San Francisco*, 142 S. Ct. 1926 (2022).

Seventh Circuit

On August 17, 2021, the U.S. District Court for the Northern District of Illinois denied the motions of several States, led by Texas, (i) to intervene in litigation challenging the Rule, and (ii) for relief from the court’s grant of partial summary judgment in favor of plaintiffs pursuant to Fed. R. Civ. P. 60(b). *Cook County v. Mayorkas*, 340 F.R.D. 35 (N.D. Ill. 2021). On June 27, 2022, the Seventh Circuit affirmed the District Court’s denial of the motion to intervene. *Cook County v. Texas*, ___ F. 4th ___, 2022 WL 2301877 (7th Cir. 2022). Absent an extension, the

³ State of California & State of New York, et al., Comment Letter on Anticipated Notice of Proposed Rulemaking (Oct. 22, 2021), <https://www.regulations.gov/comment/USCIS-2021-0013-0116>.

⁴ Make the Road New York, Comment Letter on Anticipated Notice of Proposed Rulemaking (Oct. 22, 2021), <https://www.regulations.gov/comment/USCIS-2021-0013-0117>; The Legal Aid Society, Comment Letter on Anticipated Notice of Proposed Rulemaking (Oct. 22, 2021), <https://www.regulations.gov/comment/USCIS-2021-0013-0179>; Catholic Charities Community Services, NY, et al., Comment Letter on Anticipated Notice of Proposed Rulemaking (Oct. 22, 2021), <https://www.regulations.gov/comment/USCIS-2021-0013-0135>; Catholic Legal Immigration Network, Inc., Comment Letter on Anticipated Notice of Proposed Rulemaking, <https://www.regulations.gov/comment/USCIS-2021-0013-0130>.

⁵ Public Charge Ground of Inadmissibility, 87 Fed. Reg. 10,570 (Feb. 24, 2022).

⁶ USCIS, *USCIS Updates Public Charge Resources Webpage to Provide Information on the Public Charge Ground of Inadmissibility and Public Benefits Available to Noncitizens* (Jun. 3, 2022), <https://www.uscis.gov/newsroom/alerts/uscis-updates-public-charge-resources-webpage-to-provide-information-on-the-public-charge-ground-of>.

time for Texas and the other states seeking intervention to petition the Supreme Court for certiorari is “within 90 days after entry of the judgment.” S. Ct. R. 13.1.

Application **GRANTED**. The stay is extended to **November 17, 2022**. The parties shall file a joint status letter by **November 11, 2022**.

SO ORDERED.



Ona T. Wang
U.S.M.J.

7/15/22

Respectfully submitted,

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